IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9097 OF 2007

Malage Shikshan Mandal & Ors... ... Petitioners.

Versus

Ashok Yashwant Burud & Ors.... ... Respondents.

Mr. S. S. Patwardhan for the Petitioners.
Mr. A. D. Parab for Respondent Nos.1 and 2.
Mr.Amit Borkar for Respondent No.3.

CORAM : S.C.DHARMADHIKARI, J.

DATED : 19TH DECEMBER, 2007.

P.C.:

Rule.

2. Learned Counsel appearing for the respective respondents waive service.

3. By consent, Rule made returnable and heard forthwith.

4. Heard Mr. Patwardhan, learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondents including Mr. Borkar for respondent No.3.

5. The order under challenge directs respondent No.3 to look after the management of the trust and the schools run by the trust.

6. This order was passed on an application made by respondent Nos.1 and 2.

7. The learned Counsel for the petitioners points out that petitioner No.1 is the trust and the other petitioners, namely, Nos.2 to 5 are the trustees of the trust and their names are entered into Schedule-I of the Public Trust Register. The respondent Nos.1 and 2 claim to be interested in the affairs of the trust. Respondent No.3 is an ex-employee of a school which was administered and managed by the trust.

8. It is rather surprising that an application of the present nature is made and heard so also allowed without the trust being put to notice and on the very day on which the order was passed, respondent No.3 choses to appear before the Deputy Charity Commissioner. The Deputy Charity Commissioner apart from the fact that the subject Application is under Section 41-A of the Bombay Public Trusts Act, 1950, scope of which has been considered in several decisions of this Court, proceeded to direct as under:

"1. In continuation of the order passed in

application No.904/2000 dated 20.4.2001, opponent Mr. Vithalrao R. Bhosale is hereby directed to look after the management of the trust and the schools run by the said trust.

2. He is further directed to take all necessary steps in the interest of the trust and the schools run by the said trust, as per law.

3. This order will remain in force till the final decision of the application No.2/2006."

9. After having perused this order, I am satisfied that the same apart from being vitiated for breach of principles of natural justice ought not to have been passed without the Deputy Charity Commissioner satisfying himself with regard to the administration of affairs of the trust in question. That satisfaction is not apparent at all in as much as barring the contents of the application and some earlier order nothing has been referred to in the impugned order. It may be that some change reports are pending. The Deputy Charity Commissioner was fully aware that the application also prays for a direction to the Administrator to hold election. Aware as he is of his powers, he does not issue such direction but still directs the present respondent No.3 to look after the management of the trust and schools run by the trust. The manner in which these orders are passed, to say the least, discloses a haste and undue anxiety to see that the Management and Administration is not with the Trustees but somebody else.

10. In such circumstances, the impugned order is quashed and set aside. The application No. 908 of 2007 is restored to file. However, the application shall not be heard by the In-charge Deputy Charity Commissioner Mr.M. K. Dongre but by such other Deputy Charity Commissioner or Officer who has been empowered and authorised by the Charity Commissioner in this behalf.

11. The writ petition is, therefore, allowed in the above terms. The concerned Deputy Charity Commissioner / Officer to hear and expeditiously disposed of the application.

12. All contentions on merits are kept open.

13. A copy of the present order be sent to the Charity Commissioner, Mharashtra State for his information and necessary action.

14. Rule made absolute in the above terms. No order as to costs.

Sd/-

(S.C.DHARMADHIKARI, J.)